



Paper No. 3

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In re Application of
Benz, et al.
Application No. 09/973,907
Filed: October 9, 2001
Attorney Docket No. ITTD5003ECJP

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OFFICE OF PETITIONS

DECISION GRANTING PETITION

This is a decision on the petition filed December 6, 2001, under 37 CFR 1.10(d) requesting that the above-cited application be accorded a filing date of October 9, 2001, rather than the presently accorded filing date of October 10, 2001.

Petitioner alleges that the application was deposited in a Express Mail depository in Durham, North Carolina on October 9, 2001, prior to the last scheduled pick-up time of 5:30 p.m. but, on October 9, 2001, the United States Post Office (USPS) made the last pick-up at the depository in question prior to the scheduled time. Petitioner argues that the erroneous early pick-up as committed by the USPS resulted in a the application not being picked up until October 10, 2001, and being accorded an erroneous date-in of October 10, 2001. In support, the petition is accompanied by: 1) the declaration of Mr. Richard Owen, Office Administrator, attesting to the time Ms. Maggie Blackman, who deposited the application, left petitioner's office to deposit the application with the Express Mail service; 2) the declaration of Ms. Shelia Alexander, Paralegal, attesting that the last scheduled pick-up time of the Express Mail depository in question is 5:30 p.m. and attesting to the statement of a USPS representative made to her indicating that the last pick-up at the subject depository on October 9, 2001, occurred at 5:11 p.m., and 3) the declaration of Ms. Maggie Blackman, Paralegal, attesting to the circumstances surrounding her delivery of the application to the Express Mail depository.

Among other requirements that petitioner has satisfactorily met, 37 CFR 1.10(d)(3) requires that "the petition include a showing, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office Addressee" service prior to the last scheduled pick-up for that day." The evidence is convincing that petitioner did, in fact, deposit the application in the Express Mail depository prior to the last scheduled pick-up time on October 9, 2001, but that the last pick-up for October 9, 2001, was made prior to the scheduled time resulting in the application receiving a date-in of October 10, 2001.

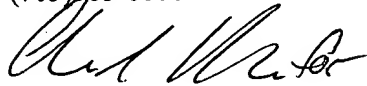
In view of the above, the petition is granted. A corrected filing receipt is enclosed showing the filing date for the application as October 9, 2001.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of October 9, 2001.

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Any inquiries related to this decision should be directed to Kenya A. McLaughlin, Petitions Attorney, at
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for Patent Examination Policy

Enclosure: Corrected Filing Receipt